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2 **Debtors' Thirty-Fifth Omnibus Objection to Claims (Valued  
3 Derivative Claims)**

4

5 **Debtors' Fortieth Omnibus Objection to Claims (Late-Filed  
6 Claims)**

7

8 **Debtors' Sixty-Seventh Omnibus Objection to Claims (Valued  
9 Derivative Claims)**

10

11 **Debtors' Seventy-Fourth Omnibus Objection to Claims (To  
12 Reclassify Proofs of Claim as Equity Interests)**

13

14 **Debtors' One Hundred Third Omnibus Objection to Claims (Valued  
15 Derivative Claims)**

16

17 **Debtors' One Hundred Eleventh Omnibus Objection to Claims (No  
18 Liability Claims)**

19

20 **Debtors' One Hundred Twenty-Seventh Omnibus Objection to Claims  
21 (Settled Derivatives Claims)**

22

23 **Debtors' One Hundred Thirty-Third Omnibus Objection to Claims  
24 (To Reclassify Proofs of Claim as an Equity Interest)**

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1 **Debtors' One Hundred Thirty-Fourth Omnibus Objection to Claims**  
2 **(To Reclassify Proofs of Claim as an Equity Interest)**

3

4 **Debtors' One Hundred Thirty-Fifth Omnibus Objection to Claims**  
5 **(To Reclassify Proofs of Claim as an Equity Interest)**

6

7 **Debtors' One Hundred Thirty-Sixth Omnibus Objection to Claims**  
8 **(Misclassified Claims)**

9

10 **Debtors' One Hundred Thirty-Seventh Omnibus Objection to Claims**  
11 **(Valued Derivative Claims)**

12

13 **Debtors' One Hundred Thirty-Eighth Omnibus Objection to Claims**  
14 **(No Liability Derivatives Claims)**

15

16 **Debtors' One Hundred Thirty-Ninth Omnibus Objection to Claims**  
17 **(Inconsistent Debtor Claims)**

18

19 **Debtors' One Hundred Fortieth Omnibus Objection to Claims**  
20 **(Duplicative of Indenture Trustee Claims)**

21

22 **Debtors' One Hundred Forty-First Omnibus Objection to Claims**  
23 **(No Supporting Documentation Claims)**

24

25 **Debtors' One Hundred Forty-Second Omnibus Objection to Claims**

1 (Amended and Superseded Claims)

2

3 Debtors' One Hundred Forty-Third Omnibus Objection to Claims

4 (Late-Filed Claims)

5

6 Debtors' One Hundred Forty-Fourth Omnibus Objection to Claims

7 (To Reclassify Proofs of Claims as Equity Interests)

8

9 Debtors' One Hundred Forty-Fifth Omnibus Objection to Claims

10 (Settled Derivatives Claims)

11

12 Debtors' One Hundred Forty-Sixth Omnibus Objection to Claims

13 (Settled Derivatives Claims)

14

15 Debtors' One Hundred Forty-Seventh Omnibus Objection to Claims

16 (Partially Settled Guarantee Claims)

17

18 Debtors' Ninety-Eighth Omnibus Objection to Claims

19 (Insufficient Documentation)

20

21 Debtors' Ninety-Ninth Omnibus Objection to Claims (Insufficient  
22 Documentation)

23

24 Debtors' One Hundred Ninth Omnibus Objection to Claims

25 (Insufficient Documentation)

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2 **Motion of Counsel to Mark Glasser to Withdraw**

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4 **First Motion of Mark Glasser to Extend Time for Claim**

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25 **Transcribed by: Dena Page**

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1

2 APP E A R A N C E S :

3 WEIL, GOTSHAL & MANGES LLP

4 Attorneys for Debtors

5 767 Fifth Avenue

6 New York, NY 10153

7

8 BY: MARK I. BERNSTEIN, ESQ.

9 TERESA C. BRADY, ESQ.

10

11

12 WEIL, GOTSHAL & MANGES LLP

13 Attorneys for Debtors

14 200 Crescent Court

15 Suite 300

16 Dallas, TX 75201

17

18 BY: SARAH MOORE DECKER, ESQ.

19

20

21

22

23

24

25

Page 7

1

2 REILLY POZNER LLP

3 Attorneys for Debtors

4 1900 Sixteenth Street

5 Suite 1700

6 Denver, CO 80202

7

8 BY: MICHAEL A. ROLLIN, ESQ.

9

10

11 ALSTON & BIRD LLP

12 Attorneys for Wilmington Trust Co., as Trustee of Certain

13 Securitization Trusts

14 90 Park Avenue

15 New York, NY 10016

16

17 BY: JOHN SPEARS, ESQ.

18

19

20

21

22

23

24

25

Page 8

1

2 BERNSTEIN SHUR

3 Attorneys for Citibank, N.A. and Wilmington Trust Company

4 as indenture trustees

5 100 Middle Street

6 P.O. Box 9729

7 Portland, ME 04104

8

9 BY: MICHAEL A. FAGONE, ESQ.

10

11

12 BURNS & LEVINSON, LLP

13 Attorneys for Burns & Levinson, LLP

14 125 Summer Street

15 Boston, MA 02110

16

17 BY: TAL UNRAD, ESQ. (TELEPHONICALLY)

18

19

20

21

22

23

24

25

Page 9

1

2 CHAPMAN AND CUTLER LLP

3 Attorneys for U.S. Bank as Indenture Trustee

4 330 Madison Avenue

5 34th Floor

6 New York, NY 10017

7

8 BY: CRAIG M. PRICE, ESQ.

9

10

11 GUSRAE, KAPLAN, BRUNO & NUSBAUM PLLC

12 Attorneys for Mr. Glasser

13 120 Wall Street

14 New York, NY 10005

15

16 BY: BRIAN D. GRAIFMAN, ESQ.

17

18

19 JAMES K. OPENSHAW, ATTORNEY AT LAW

20 Attorney for California Department of Water Resources

21 1515 K Street

22 Suite 200

23 Sacramento, CA 95814

24

25 BY: JAMES K. OPENSHAW, ESQ. (TELEPHONICALLY)

1

2 MORRISON & FOERSTER

3 Attorneys for CGKL Ventures LLC

4 425 Market Street

5 San Francisco, CA 94105

6

7 BY: VINCENT J. NOVAK, ESQ. (TELEPHONICALLY)

8

9

10 MILBANK, TWEED, HADLEY & MCCLOY LLP

11 Attorneys for UCC

12 One Chase Manhattan Plaza

13 New York, NY 10005

14

15 BY: BRADLEY SCOTT FRIEDMAN, ESQ.

16 DENNIS C. O'DONNELL, ESQ.

17

18

19 NIXON PEABODY LLP

20 Attorneys for Deutsche Bank National Trust Company

21 437 Madison Avenue

22 New York, NY 10022

23

24 BY: CHRISTOPHER M. DESIDERIO, ESQ.

25

Page 11

1

2 RUTAN & TUCKER, LLP

3 Attorneys for LINC - Redondo Beach Seniors, Inc.

4 611 Anton Boulevard

5 Suite 1400

6 Costa Mesa, CA 92626

7

8 BY: CAROLINE R. DJANG, ESQ. (TELEPHONICALLY)

9

10

11 W. DOZORSKY, ATTORNEY AT LAW

12 Attorneys for Rosalindo Barrios

13 2445 West Chapman Avenue

14 Orange, CA 92868

15

16 BY: W. DOZORSKY, ESQ. (TELEPHONICALLY)

17

18

19 ALSO PRESENT (TELEPHONICALLY):

20 CHRISTINA KIM, In Propria Persona

21 GURDIP REHAL, California Department of Water Resources

22 A. JAMES BOYAJIAN, ESQ., Attorney for Jeffery K. Wardell

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1 P R O C E E D I N G S

2 THE COURT: Be seated please. Good morning.

3 MR. BERNSTEIN: Good morning, Your Honor. Mark  
4 Bernstein from Weil, Gotshal & Manges on behalf of the Lehman  
5 Chapter 11 debtors. We are here for a claims hearing, this  
6 morning. We have a number of uncontested items and then a few  
7 contested items that mostly revolve around a similar issue. As  
8 usual, we may take some of the uncontested items out of order  
9 to avoid people getting up and down.

10 At this point, I'll turn the podium over to my  
11 colleague, Teresa Brady, to handle the first portion.

12 THE COURT: Okay.

13 MS. BRADY: Good morning, Your Honor. Teresa Brady  
14 from Weil, Gotshal & Manges on behalf of debtors. I will be  
15 addressing agenda items number 1, 3, 5, and 12. Each of these  
16 are nonconsensual reduce and allow omnibus objections, and each  
17 of these are uncontested today.

18 THE COURT: Okay.

19 MS. BRADY: Turning to agenda items number 1 and  
20 number 3, this was omnibus objection thirty-five and sixty-  
21 seven. Since the last claims hearing on June 2nd, the debtors  
22 have successfully settled two additional claims on the thirty-  
23 fifth omnibus objection -- this was the Central Puget Transit  
24 Authority -- and six additional claims on the sixty-seventh  
25 omnibus objection; this was with the counterparties Citibank,

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1 Lloyds, TSB Bank, and Pentwater Growth Fund. So we therefore  
2 respectfully request that Your Honor grant a fourth  
3 supplemental order on the thirty-fifth omnibus objection and a  
4 fourth supplemental order on the sixty-seventh omnibus  
5 objection reducing and allowing these claims to the settlement  
6 amount.

7 THE COURT: I will do that.

8 MS. BRADY: Thank you, Your Honor.

9 Turning to agenda item number 5, this is the 103rd  
10 omnibus objection. Your Honor previously granted an amended  
11 order on this objection on May 19th which reduced and allowed  
12 the number of claims in this omni. One of the claims that was  
13 reduced in that amended order belonged to a counterparty,  
14 Pinnacle American Core Plus Bond Fund. Pinnacle never filed a  
15 timely response and to date still has not filed a response or  
16 tried to contact the debtors to our knowledge. Nonetheless,  
17 the debtors have since discovered that due to inadvertent  
18 error, the reduce and allow amount as to Pinnacle on that  
19 amended order was incorrect, and therefore, we respectfully  
20 request that Your Honor consider a second supplemental order  
21 which would revise that modified amount actually in Pinnacle's  
22 favor.

23 THE COURT: Happy to do that.

24 MS. BRADY: And finally, turning to agenda item number  
25 12, this is the 137th omnibus objection. The debtors, in this

1 omni, are seeking to reduce and allow twenty-one claims  
2 belonging to nine counterparties. Three of these  
3 counterparties did not respond at all to the omnibus objection.  
4 The debtors, therefore, seek to reduce and allow their five  
5 claims on an uncontested basis.

6 With respect to the balance of the claims on this  
7 omni, the counterparties have either filed timely responses or  
8 been granted extensions to the time to respond by the debtors,  
9 and we have actually spoken by telephone or by e-mail to each  
10 of these counterparties, so therefore, we respectfully request  
11 that these claims be adjourned to a future hearing so that we  
12 can try to have some meaningful settlement negotiations.

13 THE COURT: So this is just an adjournment as to this?

14 MS. BRADY: It is -- we're seeking an order as to the  
15 five claims which the respondents did not respond to this  
16 omnibus objection, and then an adjournment as to the balance of  
17 the claims on this omni.

18 THE COURT: Fine, I'll grant that relief.

19 MS. BRADY: Thank you, Your Honor. And if there are  
20 no further questions, I'd like to turn the podium over to my  
21 colleague, Sarah Decker.

22 THE COURT: That's fine.

23 MS. DECKER: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MS. DECKER: Sarah Decker with Weil Gotshal for the

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1 debtors. I'll be covering agenda items numbers 2, 4, 7, and 14  
2 through 22 in the uncontested portion of today's agenda.

3 Agenda item number 2 is a carryover item from the  
4 debtors' omnibus objection to claims which Your Honor  
5 previously granted. The fortieth omnibus objection sought to  
6 disallow and expunge claims that were filed after the  
7 applicable bar date. This matter is going forward today solely  
8 as to the five PIMCO claims that are listed on Exhibit 2 to  
9 this morning's agenda. Those claims are claims number 35173,  
10 34745, 34746, 36788, and 35141. The debtors have determined  
11 that PIMCO no longer opposes the relief sought in the objection  
12 with respect to those claims. Accordingly, the debtors  
13 respectfully request that the Court grant the fortieth omnibus  
14 objection with respect to the five PIMCO claims listed on  
15 Exhibit 2.

16 THE COURT: It's granted as to those claims.

17 MS. DECKER: Thank you, Your Honor.

18 Agenda item number 4 is a carryover item from the  
19 debtors' seventy-fourth omnibus objection to claims which Your  
20 Honor had previously granted.

21 The seventy-fourth omnibus objection seeks to  
22 reclassify as equity interest proofs of claim that are based on  
23 ownership of stock in the debtors. This matter is going  
24 forward solely on an uncontested basis with respect to the  
25 claims of Federated Strategic Income Fund and Federated Bond

1 fun, claim numbers 15065 and 15066, respectively. The debtors  
2 have determined that the Federated Funds no longer oppose the  
3 relief sought in the objection with respect to those claims.  
4 Accordingly, the debtors respectfully request that the Court  
5 grant the seventy-fourth omnibus objection with respect to the  
6 Federated Funds claims, numbers 15065 and 15066.

7 THE COURT: It's granted as to those two claims.

8 MS. DECKER: Thank you, Your Honor.

9 Agenda item number 7 is a carryover item from the  
10 127th omnibus objection to claims which Your Honor heard and  
11 granted at the hearing on June 2nd. The 127th omnibus  
12 objection seeks to modify and allow claims for which the  
13 parties have reached an agreement with respect to the claim  
14 amount, classification, and/or debtor entity that is not  
15 reflected on the claimant's proof of claim. The matter is  
16 going forward today solely as to the claims of Fannie Mae and  
17 City View Plaza, claim numbers 40611 and 36803 respectively.  
18 The objection, as to all other claims, was previously granted,  
19 withdrawn, or otherwise resolved.

20 Fannie Mae filed a response to the 127th omnibus  
21 objection and it later withdrew that response after debtors  
22 clarified the relief that was sought in the objection.  
23 Additionally, City View Plaza have indicated that they do not  
24 oppose the relief sought by the objection. Accordingly, the  
25 debtors respectfully request that the Court grant the 127th

1 omnibus objection with respect to Fannie Mae and City View  
2 Plaza's claims, numbers 40611 and 36803.

3 THE COURT: The 127th omnibus objection to claims is  
4 granted as to those two claims.

5 MS. DECKER: Thank you, Your Honor.

6 Moving to agenda item number 14, which is the debtors'  
7 139th omnibus objection to claims, that objection seeks to  
8 modify claims on the claims register so that the claims are  
9 asserted against LBHI, which appear to be the debtor against  
10 whom the claim is asserted. Certain of the claims subject to  
11 this objection have conflicting information with respect to the  
12 debtor and/or case number. For example, a proof of claim may  
13 list LBHI as a debtor against who the claim is asserted, but  
14 then the claim lists the incorrect case number. In other  
15 instances, the proof of claim indicates that a guarantee claim  
16 is being asserted against LBHI, but the proof of claim lists  
17 the debtor as the primary obligor. So the debtors are merely  
18 seeking to modify the claims register to reflect the fact that  
19 the claims are being asserted against LBHI, which is the  
20 creditor against whom the claims are intended to be asserted.

21 The debtors did not receive any responses contesting  
22 the modification of the debtor to LBHI and we are proceeding on  
23 an uncontested basis. Accordingly, the debtors respectfully  
24 request that the Court grant the 139th omnibus objection to  
25 claims.

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1                   THE COURT: The 139th omnibus objection to claims is  
2 granted.

3                   MS. DECKER: Thank you, Your Honor.

4                   Agenda item number 15 is the 140th omnibus objection  
5 to claims. This objection seeks to disallow and expunge  
6 individual and noteholder claims that are duplicative of the  
7 claims filed by Wilmington Trust, Bank of New York Mellon,  
8 and/or U.S. Bank Indenture as indenture trustee for those  
9 notes. The debtors are only proceeding with respect to the  
10 uncontested claims objections that have not been adjourned or  
11 otherwise resolved. And accordingly, the debtors respectfully  
12 request that the Court grant the 140th omnibus objection to  
13 claims.

14                  THE COURT: 140th omnibus objection to claims is  
15 granted on an uncontested basis.

16                  MS. DECKER: Thank you, Your Honor.

17                  Agenda item number 16 is the 141st omnibus objection  
18 to claims. That objection seeks to disallow and expunge claims  
19 that violate the Court's bar date order as they were submitted  
20 without any supporting documentation. The debtors are  
21 proceeding only with respect to those claims that are  
22 uncontested and not been adjourned or otherwise resolved.  
23 Accordingly, the debtors respectfully request that the Court  
24 grant the 141st omnibus objection to claims.

25                  THE COURT: The 141st omnibus objection to claims is

1 granted on an uncontested basis.

2 MS. DECKER: Thank you.

3 Agenda item number 17 is the 142nd omnibus objection  
4 to claims. That objection seeks to disallow and expunge claims  
5 that were amended and superseded by subsequently filed claims.  
6 The debtors are proceeding only with respect to the uncontested  
7 claims objections that have not been adjourned or otherwise  
8 resolved. Accordingly, the debtors respectfully request that  
9 the Court grant the 142nd omnibus objection to claims.

10 THE COURT: The 142nd omnibus objection to claims is  
11 granted on an uncontested basis.

12 MS. DECKER: Thank you, Your Honor.

13 Agenda item number 18 is the 143rd omnibus objection  
14 to claims. That omnibus objection seeks to disallow and  
15 expunge claims that were filed after the applicable bar date.  
16 The debtors are proceeding only with respect to those claims  
17 that are uncontested and have not been adjourned or otherwise  
18 resolved. Accordingly, the debtors respectfully request that  
19 the Court grant the 143rd omnibus objection to claims.

20 THE COURT: The 143rd omnibus objection to claims is  
21 granted on an uncontested basis.

22 MS. DECKER: Thank you, Your Honor.

23 Agenda item number 19 is the 144th omnibus objection  
24 to claims. That omnibus objection seeks to reclassify as  
25 equity interests proofs of claim that are based on the

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1 ownership of stock in the debtors. Again, the debtors are  
2 proceeding only with respect to those claims that are  
3 uncontested and have not been adjourned or otherwise resolved.  
4 Accordingly, the debtors respectfully request that the Court  
5 grant the 144th omnibus objection to claims.

6 THE COURT: The 144th omnibus objection to claims is  
7 granted on an uncontested basis.

8 MS. DECKER: Thank you, Your Honor.

9 Agenda item number 20 is the 145th omnibus objection  
10 to claims. That objection seeks to the modification and  
11 allowance of claims for which the parties have reached an  
12 agreement with respect to the claim amount, classification, or  
13 entity that is not reflected on the claimant's proof of claim.  
14 This objection seeks to modify the claims to conform to the  
15 parties' agreement. Counsel negotiated a small modification to  
16 the language of the order on the 127th omnibus objection and I  
17 have a redline for Your Honor's review, if I may approach.

18 THE COURT: You may. Thank you.

19 MS. DECKER: The order on the 127th omnibus objection  
20 was modified to address a concern raised by Poudre Valley  
21 Healthcare whose claims have been settled against some but not  
22 all of the debtors. Accordingly, the revised order now limits  
23 the claimant's rights to distribution from the applicable  
24 debtor or debtors, as opposed to all debtors. The debtors did  
25 not receive any responses to this 145th omnibus objection, and

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1 we are proceeding on an uncontested basis. Accordingly, the  
2 debtors respectfully request that the Court grant the 145th  
3 omnibus objection to claims.

4 THE COURT: The 145th omnibus objection to claims is  
5 granted on the basis of the revised order that you have  
6 submitted to me.

7 MS. DECKER: Thank you, Your Honor.

8 Agenda item number 21 is the 146th omnibus objection  
9 to claims. The 146th omnibus objection seeks the disallowance  
10 and expungement of derivative claims that have been settled  
11 between the parties either with a payment owing to the debtors  
12 with no amounts being due to the parties or with a counterparty  
13 being granted an allowed claim against one or more debtors in  
14 exchange for a release of all the other derivatives claims that  
15 are asserted by the claimant relating thereto. The 146th  
16 omnibus objection seeks to expunge those claims as necessary to  
17 effectuate the parties' agreement.

18 The debtors received one response to this objection  
19 which was filed by Goldman Sachs Lending Partners, LLC in  
20 regards to its claim number 17601. Goldman's limited response  
21 and reservation of rights simply clarifies that they do not  
22 oppose the relief sought in the 146th omnibus objection.  
23 Accordingly, the debtors respectfully request that the Court  
24 grant the 146th omnibus objection to claims.

25 THE COURT: The 146th omnibus objection to claims is

1 granted.

2 MS. DECKER: Thank you, Your Honor.

3 Agenda item number 22 is the 147th omnibus objection.

4 That objection seeks to reduce, reclassify, and/or allow a  
5 portion of certain guarantee claims that are asserted against  
6 LBHI while permitting the remaining portion of those claims to  
7 remain on the claims register pending resolution.

8 The parties have entered into agreements partially  
9 resolving the claims, and the objection seeks, simply, to  
10 bifurcate those claims that have been partially settled to  
11 effectuate the settlement of a portion of the claim while the  
12 remaining portion of the claim remains unresolved and pending  
13 on the claims register. The debtors did not receive any  
14 responses to the 147th omnibus objection, and we are proceeding  
15 on an uncontested basis. Accordingly, the debtors respectfully  
16 request that the Court grant the 147th omnibus objection to  
17 claims.

18 THE COURT: The 147th omnibus objection to claims is  
19 granted on an uncontested basis.

20 MS. DECKER: Thank you, Your Honor. And with that,  
21 I'd like to hand the podium back over to Mark Bernstein who  
22 will continue this morning's agenda beginning with item number  
23 6.

24 THE COURT: Okay, thank you.

25 MS. DECKER: Thank you.

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1 MR. BERNSTEIN: Mark Bernstein from Weil on behalf of  
2 the Lehman Chapter 11 debtors.

3 The next item on the agenda that I will be handling is  
4 item number 6, which is the 111th omnibus objection. This  
5 objection was previously heard in a related-to claims based on  
6 various litigations that were commenced against Lehman  
7 affiliates but to which any debtor -- to which no debtor was  
8 actually a party. These -- two parties objected to the  
9 objection. We worked out some additional language to add to  
10 these parties that nothing in this order has any effect on  
11 their claims against any nondebtor defendant in that  
12 litigation. Subject to the addition of that language, these  
13 parties have no further objection to their claims being  
14 disallowed.

15 And with that, we respectfully request Your Honor  
16 grant the supplemental order for the 111th omnibus objection to  
17 claims.

18 THE COURT: It's granted.

19 MR. BERNSTEIN: Thank you.

20 Agenda items number 8, 9, and 10 relate to objections  
21 133, 134, and 135. Each of these objections relates to claims  
22 based on restricted stock units which are held by former  
23 employees of the Lehman enterprise. These stock units entitle  
24 the employees only to receive common stock of LBHI at some  
25 point in the future. As a result, the debtors are seeking to

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1 reclassify these claims as equity interests, as opposed to  
2 claims against LBHI.

3 We're going forward today on an uncontested basis.

4 Any responses we've received have been adjourned to a future  
5 hearing. As a result, we request Your Honor grant the 133rd,  
6 134th, and 135th omnibus objection to claims.

7 THE COURT: Those three omnibus objections are granted  
8 on an uncontested basis.

9 MR. BERNSTEIN: Thank you, Your Honor.

10 Agenda item number 11 relates to omnibus objection  
11 136. This objection seeks to reclassify claims that were filed  
12 as secured claims as unsecured claims against the debtors. The  
13 claims either checked the box on a proof of claim form that  
14 asserted they were secured or included some sort of language in  
15 an appendix that said they were secured by some sort of right.  
16 In many cases, it was a reservation of rights that we may be  
17 secured by a right of setoff at some point in the future. The  
18 debtors are not seeking at this point to affect the parties'  
19 rights to setoff, and we've added the language to the order to  
20 that effect.

21 In addition, it was -- sometimes it was unclear  
22 whether the party was filing as a secured claim or an unsecured  
23 claim, but for the avoidance of doubt, we included those on  
24 these objections to reclassify them.

25 To the extent anybody responded, we've adjourned that;

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1 we're going forward today on an uncontested basis. And we  
2 respectfully request Your Honor grant the 136th omnibus  
3 objection.

4 THE COURT: The 136th omnibus objection is granted on  
5 an uncontested basis.

6 MR. BERNSTEIN: Thank you, Your Honor. The last  
7 uncontested item is the 138th omnibus objection. It's number  
8 13 on the agenda. This relates to derivative contracts for  
9 which claims were filed where the debtors analyzed the  
10 derivatives and determined that, actually, the debtors are in  
11 the money on these derivative contracts or no money is owed by  
12 the debtors.

13 There were a couple responses received. The debtors  
14 are seeking to work those matters out with the parties  
15 separately. So we're going forward on an uncontested basis  
16 today and respectfully request Your Honor grant the 138th  
17 omnibus objection to claims.

18 THE COURT: The 138th omnibus objection to claims is  
19 granted on an uncontested basis.

20 MR. BERNSTEIN: Thank you, Your Honor. That concludes  
21 the uncontested portion of the agenda. We do have a few  
22 contested items on the agenda today, and I'm going to turn the  
23 podium over to Mike Rollin of Reilly Pozner who's going to be  
24 representing the debtors in these matters.

25 THE COURT: Okay.

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1 MR. ROLLIN: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. ROLLIN: Your Honor, my name is Michael Rollin,  
4 and I'm with Reilly Pozner in Denver, Colorado. We are special  
5 counsel to the debtors for residential mortgage-backed  
6 securities and secondary market litigation. We primarily  
7 prosecute and defend claims related to representations and  
8 warranties and RMBS transactions.

9 I'll be handling agenda items number 23, 24, and 25  
10 this morning, which are debtors' 98th, 99th, and 109th omnibus  
11 objection to claims respectively. A couple of these are  
12 proceeding on an uncontested basis. I'm going to take care of  
13 them first. Those are claims with respect to -- objections  
14 with respect to claims brought by the Bank of New York Mellon.  
15 Those are proceeding on an uncontested basis. I've spoken with  
16 counsel for Bank of New York Mellon. They are not proceeding  
17 and they have not responded. The claims to be disallowed and  
18 expunged on an uncontested basis are found in Exhibit 18, and I  
19 respectfully request that the Court disallow and expunge those  
20 claims.

21 THE COURT: As to the ones you've identified on that  
22 exhibit, the objection is granted.

23 MR. ROLLIN: Thank you. The other uncontested matter  
24 that's identified in this particular omnibus objection relates  
25 to HSBC in its capacity of trustee as well. Those are also

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1 proceeding uncontested. They have not filed a response; they  
2 have agreed to allow the claims to be disallowed and expunged,  
3 and I request the Court do so.

4 THE COURT: That is also granted on an uncontested  
5 basis.

6 MR. ROLLIN: And for the clarification of the record,  
7 those are found in Exhibit 16 to this morning's agenda.

8 THE COURT: Okay.

9 MR. ROLLIN: What is proceeding on a contested basis,  
10 Your Honor, are objections to claims of Citibank and Wilmington  
11 Trust Company as indenture trustee and successor indenture  
12 trustee respectively, and to U.S. Bank in its capacity as  
13 trustee. And those objections and those claimants in the  
14 briefing share many common elements. And in the interest of  
15 economy, I'll address them together, with the Court's  
16 permission, drawing distinctions where appropriate.

17 Your Honor, after giving a little bit of background,  
18 I'd like to hit on three narrow points. One is that these  
19 claimants have provided no facts that would allow anyone to  
20 assess the validity of the claims that are at issue in this  
21 hearing. These are insufficient documentation objections.

22 Number two, as a result, the claims do not meet the  
23 information and documentation requirements for the bar date  
24 order and the relevant case law, and as a consequence, they do  
25 not rise to the level of a properly filed claim under Rule

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1 3001, are not entitled to a presumption of validity, and should  
2 be disallowed and expunged.

3 But by way of background, and just to give the Court a  
4 little bit of context, I'd like to speak about the general  
5 transaction structure and the representations and warranties  
6 that are at issue. I think that'll help frame the further  
7 discussion.

8 As the Court is aware, Lehman bought residential  
9 mortgage loans on the secondary mortgage market through  
10 affiliates from third parties and also some that were  
11 originated by affiliates, and they transferred through the  
12 chain of companies and were deposited into securitization  
13 trusts. Trustees like Citi, Wilmington, and U.S. Bank were  
14 appointed to administer the trust in accordance with the trust  
15 documents, and servicers and master servicers were appointed to  
16 interact with borrowers, handle remittances and those types of  
17 things.

18 Now, the trust agreements contain representations and  
19 warranties about the quality and characteristics of the  
20 underlying mortgage loans, and it's these representations and  
21 warranties that form the significant basis of the claims at  
22 issue. But it's worth noting -- and we'll come back to this  
23 point later because it's an important one -- that not all the  
24 representations and warranties were given by the debtors. In  
25 quite a number of instances, the representations and warranties

1 of the unaffiliated sellers were simply passed into the trust.

2 The trust agreements also had a separate obligation,  
3 and that was to require the depositor to tender the loan  
4 documents on a loan-by-loan basis, and they would go to a  
5 custodian that was working for the trustee who would verify  
6 that there were no errors or omissions in the documents and  
7 they would provide -- they call those document exceptions --  
8 and they would provide an exception report and under certain  
9 circumstances, the depositor would have an obligation to cure  
10 those. And that is also a very significant portion of U.S.  
11 Bank's claim. I believe Citi has document exceptions, as well;  
12 they just haven't provided us any information about them.

13 Both the representation and warranty claims and the  
14 document exception claims have a series of elements and  
15 conditions precedent set forth in the relevant contracts, and  
16 those are all governed by state contract law as to whether  
17 liability arises.

18 As to the claims in this case, the trustees' combined  
19 claims cover just over 1.1 million residential mortgage loans:  
20 about a million from U.S. Bank and about 70,000 from the  
21 City/Wilmington group. And the trustees demand payment for the  
22 entire aggregate unpaid principal balance of all 1.1 million  
23 loan.

24 Now, what we did was, to the extent that the claimants  
25 provided any information whatsoever that purported to support a

1 loan-level breach, that is, any breach information at all,  
2 regardless of whether it satisfied all of the elements of  
3 liability under the contracts, or if they provided us a  
4 document exception, whether or not it was material and whether  
5 or not it was harmful, two of which are required elements for  
6 liability, to that extent, we are not pursuing disallowance at  
7 this time. We want to -- we'll review those, determine whether  
8 there's a -- how to proceed, based on that. But if they gave  
9 us anything, we're not proceeding. And the schedules attached  
10 to our reply papers lay that distinction out.

11 What we are proceeding with and what we are asking the  
12 Court to disallow are approximately -- claims based on  
13 approximately 800,000 residential mortgage loans for which the  
14 claimants have provided no factual basis for liability, no  
15 breach evidence or specific allegation at all. About 740,000  
16 of those are within the U.S. Bank group, and approximately  
17 70,000, save maybe 60 or so loans, are in the City/Wilmington  
18 Trust Company group. Not only have they not provided us any  
19 information, there's actually evidence to support -- that would  
20 contradict the validity of these claims.

21 With respect to Citi, attached to the declaration of  
22 Keri Reed, which is part of our reply papers, is a notice and  
23 request for direction sent by Citibank to the certificate  
24 holders in all of the deals. And it tells them, page 2,  
25 paragraph 3, that the trustee has not independently analyzed

1       whether the claims set forth in the proofs of claim will be  
2       allowed. And on page 1 at paragraph 2, the proofs of claim  
3       were filed by the trustee as a protective matter in order to  
4       avoid the loss of rights against the debtors. In other words,  
5       they haven't analyzed whether they have a claim at all. They  
6       filed the claims prophylactically. In fact, Your Honor, their  
7       loans that are in these deals are performing at a rate of just  
8       over eight-one percent; that's also, I believe, in Keri Reed's  
9       declaration.

10               Now, loan performance doesn't necessarily tell you  
11       whether there's a breach or not. You can have a breach where a  
12       loan doesn't go into default. You can have a loan that goes  
13       into default that doesn't have a breach. But an eight-one  
14       percent in those deals is indicative of whether there are  
15       material breaches, certainly in the aggregate, which was the  
16       nature of their claim. In fact, Citi concedes that if you  
17       demand -- and this is exactly what they did -- but if you  
18       demand the entire unpaid principal balance of the loan pools,  
19       that that would be -- their quote -- "it would grossly  
20       overstate the amount of the claims". Their language is: "The  
21       Trustees do not contend that the claims should be allowed in an  
22       amount equal to the aggregate amount of the underlying mortgage  
23       loans in each transaction; doing so would grossly overstate the  
24       amount of the claims." That's from their response brief at  
25       page 8. But that's exactly what they did, until we objected.

1 And they still haven't modified their claim amount. They're  
2 still -- technically, their demand is for the entire UPB. The  
3 same is true for U.S. Bank, and the same is true for lots of  
4 trustees. Rather than vetting, they just sort of dumped it and  
5 claim liability on every single loan in every single pool.

6 U.S. Bank's -- the evidence that calls U.S. Bank's  
7 claims into question, I think, is even more compelling, Your  
8 Honor. U.S. Bank also made a claim for the aggregate unpaid  
9 principal balance for all of the mortgage loans in all of their  
10 deals. Now, their securitizations are performing at a rate of  
11 sixty-seven percent, but more importantly, U.S. Bank sends out  
12 remittance reports to its certificate holders, and in 60 of the  
13 226 at-issue transactions, they state right on their remittance  
14 reports -- and these are only two months old -- that they know  
15 of no material breaches, and yet they've made a claim against  
16 the debtors for material breaches for every single one. Your  
17 Honor, they've not evaluated whether they have claims with  
18 respect to those 800,000 loans, and they haven't provided us  
19 any information with which we can evaluate whether there's  
20 liability as to those 800,000 loans. I've pointed out some of  
21 the things, even without having an opportunity to review any  
22 documentation, that suggest that their claims are grossly  
23 overstated.

24 THE COURT: Well, let me ask you this; how could that  
25 be done?

1 MR. ROLLIN: How could what be done?

2 THE COURT: What you just said; how would you  
3 determine material breaches with respect to the pool of loans.

4 MR. ROLLIN: Sure, I'm glad to answer that. I'm glad  
5 to answer that because that's exactly what I and my firm do on  
6 behalf of the debtors when we're prosecuting representation and  
7 warranty claims out there in courts across the country and are  
8 doing so now. We -- the debtors have a process by which -- and  
9 this is on their whole loan portfolio, right, loans and losses  
10 that are Lehman's and have not been securitized. We simply --  
11 the servicer has mechanisms and the debtors have mechanisms.  
12 We have an infrastructure by which we evaluate loans using  
13 whatever criteria we think are appropriate to determine whether  
14 there's been a breach.

15 So here are the elements. You have to have a breach  
16 of a representation and warranty that causes a material and  
17 adverse impairment on the value of the loan and there's a  
18 contractually-defined repurchase price that's used. Then you  
19 have an obligation to give notice. The debtors have that  
20 mechanism and have used that mechanism pre-bankruptcy for quite  
21 a number of years. I've been doing this since 2007; they've  
22 had other lawyers who were doing it beforehand.

23 So there is a mechanism to go through your loans,  
24 using whatever criteria you want. For example, you have an  
25 originator that you think is problematic or that you had to

1 terminate because of some problem. You think there may be  
2 problems with their loans. You go through their loans and  
3 figure out whether or not there's a potential for breaches.  
4 You dig down. If you find them, you prosecute them, you plead  
5 them, or you at least give notice and try to work it out. So  
6 that -- now, the fact that it can be done is reflected by the  
7 fact that U.S. Bank, for example, found 727 breaches, and they  
8 sent that information to us after we filed the objection and  
9 asked for it. And we are no longer seeking disallowance for  
10 those claims.

11 So it's capable of being done; we do it in courts  
12 across the country. U.S. Bank and Citi have participated in  
13 loan repurchase litigation, primarily through Aurora Loan  
14 Services, the master servicer, at least since the end of 2006.  
15 So you vet the loans, you find the breaches, you give notice.  
16 If the counterparty doesn't respond, you prosecute, if that's  
17 what you choose to do in your business judgment.

18 THE COURT: So how could this have been done  
19 differently by these institutions approaching the bar date. Is  
20 it your position that what they should have done was to go  
21 through a loan-by-loan review to determine the existence of  
22 breaches?

23 MR. ROLLIN: Well --

24 THE COURT: Because that doesn't seem like a  
25 reasonable exercise.

1                   MR. ROLLIN: Let me see if I can -- here's how it  
2 works in practice, and I think their lawyers will agree, if  
3 they know. In practice, the trustee or, through its servicer,  
4 doesn't even begin to look for breaches until a loan goes into  
5 default. As I said before, a default isn't necessary to have  
6 breach. You can have a breach without a default. But as a  
7 business decision, that's what they choose do to because they  
8 think it would be -- and I agree -- it would be a significant  
9 task to do otherwise, but that's not to say that you can't, or  
10 that in the interest of the parties who you're trying to  
11 protect, you shouldn't. You can look at pools and see that  
12 they have a very significant, for example, default rate and  
13 then grow concerned about that. Use analytics, and then dig in  
14 a little bit deeper. And I think that they could have done  
15 that and they have done that and they did that pre-bankruptcy.  
16 And pre-bankruptcy, they knew to sue the transferors, where  
17 liability -- in our briefing, we talked about the different  
18 channels through which Lehman acquired loans. There are bulk  
19 sellers who are called transferors in the trust documents,  
20 there are correspondent lenders that sell on a more fluid basis  
21 through Lehman Brothers Bank to Lehman Brothers Holdings, and  
22 then there are some Lehman originations. Well, under the trust  
23 documents, including the trust documents provided as exhibits  
24 by Tim Pillar from U.S. Bank just yesterday or the day before,  
25 it's -- the trust agreements specifically say that if you

1 have -- if a trustee has a representation and warranty claim on  
2 a transferor-originated loan, the first channel, their only  
3 recourse is against that transferor, and specifically not  
4 against Lehman. In pre-bankruptcy, that's precisely what they  
5 did through Aurora Loan Services who was prosecuting the claims  
6 at the time. But now that we're in bankruptcy, they just took  
7 everything, their entire portfolio, and dumped it on the  
8 debtors and then placed on the debtors the burden of going  
9 through it finding out, no, this is a transferor loan or this  
10 is a loan for which you didn't give notice, which is the  
11 condition of proceeding. So they can do it; they have done it.  
12 As a business decision, in these cases, they've chosen not to  
13 do it, and instead, placed the burden on the debtors to do it.

14 Does that answer the Court's question?

15 THE COURT: I think you have answered the question,  
16 but I'm still a little confused as -- well, I'll express  
17 confusion when the objectors come forward, as well, as to what  
18 relief you're seeking today with respect to these matters as to  
19 which issue has been joined because it seems to me that there  
20 is an exercise that probably needs to be done on a loan-by-loan  
21 basis that presumably servicers are capable of doing. And are  
22 you suggesting that what you are seeking today is, in effect,  
23 disallowance of all claims to the extent those claims have not  
24 yet been proven to the satisfaction of the debtor by virtue of  
25 at least the identification of loan defaults.

1                   MR. ROLLIN: We'll not even ask that they be proven to  
2 the satisfaction --

3                   THE COURT: I understand; to the extent that anybody  
4 has come forward with even a scintilla of proof with respect to  
5 the existence of a loan default, you are not seeking relief.  
6 But you are seeking what amounts to elimination of all claims  
7 to the extent that no one has come forward with any proof of  
8 any sort with respect to loan defaults as to the balance of the  
9 loans; do I understand that right?

10                  MR. ROLLIN: I don't think that loan defaults are the  
11 issue. It is -- the issue is whether they've identified a  
12 breach. And so what we're asking be disallowed are all claims  
13 on all loans for which no breach of any representation or  
14 warranty has been identified.

15                  THE COURT: Okay.

16                  MR. ROLLIN: Thank you.

17                  THE COURT: And there's no equivalence between  
18 breaches and defaults?

19                  MR. ROLLIN: There -- to say there's no -- I'm not  
20 saying there's no equivalence; I'm saying that default is not a  
21 requirement of breach and breach is not a requirement of  
22 default, although servicers and trustees do use default as a  
23 way to limit the population of loans they go through, because  
24 they don't start looking at them until they go into default for  
25 breaches of representations and warranties, and in fact, even

1 then, they don't go through all of them. They typically make  
2 decisions based on whether it's a particularly troublesome or  
3 concerning originator or whether it's a very high loss. I  
4 can't speak specifically to what these trustees have done; I  
5 understand that's the general practice.

6 THE COURT: Okay.

7 MR. ROLLIN: But one point to make in that context,  
8 Your Honor, is that these are pre-petition breaches, right?  
9 The contract was breached, if at all, at the time of the  
10 closing of the deal because the representations and warranties  
11 were as of the closing. The document exceptions, they'd have  
12 to give those to us, to the debtors -- specifically to the  
13 depositor 180 days after closing and only if the depositor then  
14 didn't cure material document exception that was to be agreed  
15 upon in good faith by the parties, process that didn't take  
16 place, only then would a breach -- so these are all pre-  
17 petition. They would like to characterize them as contingent,  
18 but by not looking for them because that's your business  
19 decision, that does not make a pre-petition noncontingent claim  
20 a contingent claim.

21 Now, Your Honor, under the bar date order, as you  
22 know, they are required -- claimants are required to provide  
23 the factual and legal bases for their claims and the order  
24 requires that they do so with specificity. And in practice in  
25 the courts, including in bankruptcy courts in this district is

1 in the context of mortgage-based claims, you provide a summary  
2 of information and then make the underlying documents available  
3 to the debtors because everybody realizes it is very  
4 voluminous. And that is exactly the process the debtors tried  
5 to implement. In the fall or so in 2010, we began a series of  
6 ongoing communications with the claimants including these  
7 claimants, and we created a spreadsheet, a form spreadsheet  
8 that they could fill out with key data points for each loan,  
9 and we asked them to complete it. Citi gave us six loans; U.S.  
10 Bank gave us zero loans. Only after we filed the objection did  
11 some more information come in: 727 loans from U.S. Bank, the  
12 same 6 loans from Citi. To the extent that we had rights --  
13 and this is an issue I'll talk about in a moment, but to the  
14 extent that debtors have rights to information, we found a few  
15 more breaches: twenty-five for U.S. Bank, fifty-three for  
16 Citi. And we're not seeking disallowance for those, of course.  
17 But only after we filed the objection did they give us some  
18 information and this summary, and otherwise, otherwise nothing.

19 Now, without information about the claims, we have no  
20 way -- the debtors have no way to determine the validity, and  
21 this is all the more true when we consider that there is  
22 evidence that the creditors themselves don't know whether they  
23 have claims. They just filed prophylactic claims in the entire  
24 aggregate amount for every single loan in their deals. Under  
25 the procedure order, Your Honor, insufficient documentation --

1 a document that is -- pardon me -- when a claim does not  
2 provide sufficient documentation for the debtors to evaluate  
3 the validity of a claim, that is a ground for disallowance, the  
4 rationale being that insufficiently documented claims of these  
5 types are simply not properly filed under Rule 3001, and are,  
6 therefore, invalid. No presumption of validity arises.

7 Now, briefly to touch on the claimant's responses, we  
8 talked about one of them a moment ago, and that is they  
9 characterize these claims as contingent claims. But these are  
10 not contingent claims in the meaning of the Code. These  
11 breached occurred under state law well before the petition, and  
12 merely not looking for them or not creating an infrastructure  
13 to look for them or making the business decision to not look  
14 for them does not convert them to contingent claims. There's  
15 no future event upon which liability will be determined.

16 The other reason they say that they don't have to  
17 provide information is they say the debtors have access to the  
18 information. Well, the debtors don't. Aurora Loan Services is  
19 a nondebtor subsidiary that serves as a master servicer for a  
20 great many of these loans, but Aurora Loan Services has a  
21 separate contractual relationship with the trustees that's  
22 created in the trust documents, and they can only provide that  
23 information to the trustees. We've asked them, and they won't  
24 give it to us except with these exceptions. There are certain  
25 transactions for which SASCO, the depositor, does have rights

1 to the information, and where SASCO has those rights, the  
2 debtors have used them and obtained at least facial breach  
3 information for the loans that I just identified: twenty-five  
4 additional loans for U.S. Bank and fifty-three additional loans  
5 for the Citi/Wilmington Group. And so their argument on that  
6 is just incorrect. It doesn't reflect a thorough understanding  
7 of the transaction and the relative rights and responsibilities  
8 of the parties.

9 So, Your Honor, back to my original three points,  
10 they've not provided us -- they have a requirement to provide  
11 sufficient documentation to evaluate the claims both under the  
12 rules and under the bar date order. They have not provided  
13 that information, and as a result, we respectfully request that  
14 the claims to that extent be disallowed and expunged.

15 If the Court doesn't have any other questions, I will  
16 sit down.

17 THE COURT: No, I'm interested in hearing from the  
18 objectors.

19 MR. ROLLIN: Thank you, Your Honor.

20 THE COURT: In any order you choose.

21 MR. FAGONE: Good morning, Your Honor. Michael Fagone  
22 on behalf of Citibank, N.A. and Wilmington Trust Company in  
23 their respective indenture trustee capacities.

24 Your Honor, like my colleague, I have three main  
25 points that I'd like to emphasize, and I'll articulate --

1 THE COURT: Are they the same points?

2 MR. FAGONE: They're the same points, but maybe the  
3 opposite side --

4 THE COURT: Fine.

5 MR. FAGONE: -- of those points, Your Honor. First,  
6 Your Honor, the trustees, we don't believe, have been dilatory  
7 in providing information to the debtors or discussing these  
8 claims with the debtors.

9 Second, Your Honor, we don't believe that the debtors  
10 are correctly comprehending the claims either as filed or as  
11 they've later been described to the debtors.

12 And third, we believe that the requisite specificity  
13 for the claims has, in fact, been provided, and we believe that  
14 we met both the letter and the spirit of the Court's bar date  
15 order. So those are the three points, Your Honor, and I'll  
16 touch on them briefly, if I might.

17 THE COURT: Okay.

18 MR. FAGONE: On the first point, I think it's worth  
19 noting that the proofs of claim were filed in September of  
20 2009. And we first heard from the debtors regarding these  
21 claims in October of 2010, more than two years after these  
22 cases were commenced. We recognize that the debtors and all of  
23 their professionals have been extraordinarily busy in this  
24 case, and we're not suggesting that they should have come to us  
25 sooner. We are only pointing out, however, that it's not

1 entirely correct to suggest that the trustees have waited for  
2 two and a half years to engage in a dialogue with the debtors  
3 about the claims. That's not accurate.

4 THE COURT: Well, is it correct that these were, in  
5 effect, protected proofs of claim that were filed without  
6 conducting any meaningful diligences to the true amount of the  
7 claims?

8 MR. FAGONE: These -- yes, Your Honor. These claims  
9 were filed as contingent and/or unliquidated, and I think  
10 that's a point that the debtors may be missing, here, is we  
11 filed them and indicated on the addenda that we weren't sure  
12 what the amount of the claims was. The reason that we weren't  
13 sure of that, Your Honor, is something that I think you hit on  
14 in colloquy with counsel: doing a loan-by-loan analysis of the  
15 claims would be extraordinarily expensive and burdensome, and  
16 that's something that we hope to avoid through discussion with  
17 the debtors, but we were in a position, we believed, where we  
18 needed to file the claims or risk having them be barred for  
19 failure to meet the bar date. So we filed them and we tried  
20 to -- and I think we were successful -- indicate that they were  
21 contingent and/or unliquidated as to amount. So -- and we  
22 don't stand before this Court and suggest that the claims  
23 should be allowed in the total aggregate unpaid principal  
24 balance of the mortgage loans in each trust. That would not be  
25 an accurate presentation of what we think the amount would be.

1                   THE COURT: But isn't there a problem, when you come  
2 right down to it, that goes to the true nature of the claim and  
3 whose burden it is to determine that because the notion of the  
4 bar date is to put the debtor on actual notice of actual  
5 claims, not claims that are theoretical. And to put in a claim  
6 for the full amount is to be protective, but also to be  
7 completely misleading.

8                   MR. FAGONE: Two things, Your Honor. Yes, I agree  
9 that the purpose of the bar date is to put the debtor on notice  
10 of claims. Had we simply filed proofs of claims that listed  
11 the aggregate unpaid principal balance of the mortgage loans  
12 and said that's our claim, we would like it allowed, I would  
13 agree with Your Honor that that would be misleading. But  
14 that's not what we did. Our -- the addenda to our proof of  
15 claim which is attached to our response, in our view, made it  
16 very clear that we were saying we don't know yet; we don't know  
17 yet whether any of these 80,000 loans will go into default such  
18 that the master servicer will then investigate whether there  
19 has been a breach of a rep or a warranty or whether there's a  
20 mortgage loan defect claim. So that -- there was no intention  
21 to mislead anyone.

22                   Subsequent to the filing of the proofs of claims, the  
23 debtors have asked for some information. They've asked for  
24 loan-level data -- they've never once asked us for the  
25 exception reports -- they've asked us for the loan-level data,

1 and we went to the master servicer and asked for it. What we  
2 received, we provided. We haven't chased down every last bit  
3 of information the debtors have provided for two reasons. One,  
4 that would involve incredible expense and time, and two, the  
5 debtors have consistently maintained the position that there  
6 will never be any sort of estimation of unliquidated claims of  
7 this type in this case. So for us, we had difficulty seeing  
8 why the trustee should be put to the burden of chasing down  
9 this information, if we were only then going to be faced with  
10 the response, that's great, but you didn't know the amount of  
11 the claim as of the bar date; therefore, the claims are  
12 disallowed.

13 Your Honor, I think it's worth noting that the debtors  
14 acknowledge that there are valid, legitimate claims here. And  
15 I point just briefly, Your Honor, to the disclosure statement  
16 that the debtor filed yesterday. And under the heading  
17 "residential mortgage loan representation/warranty claims"  
18 which appears at page 45, the debtors write, and I'll just read  
19 briefly, if I could, "Based on the debtors' review of claims to  
20 date and the debtors' knowledge of the success rate of asserted  
21 repurchase and indemnity claims in the market, the debtors  
22 estimate that the amount of the allowed claims, based on the  
23 debtors' repurchase and indemnity obligations for residential  
24 mortgage loans could ultimately be approximately 10.4 billion."  
25 Those are the debtors' words. These are not fictitious claims.

1                   We concede, Your Honor, in light of the debtors'  
2                   objection, that the proofs of claim may not carry *prima facie*  
3                   effect as to amount, but we believe that they do carry *prima*  
4                   *facie* effect as to validity, and I think the debtor may be  
5                   confusing those two separate concepts: validity on one hand  
6                   and amount on the other.

7                   That, Your Honor, leads me to my second point, which  
8                   I've touched on, and that is we don't assert that these are  
9                   noncontingent liquidated fixed claims. That's not -- that was  
10                  never the assertion, and that's not the position we're taking  
11                  before the Court this morning. What we don't know, and we  
12                  admit we don't know, is whether there are defaults. The Reed  
13                  declaration suggests that eighty-one percent of the loans in  
14                  the transaction are performing. And if that's true -- I don't  
15                  know whether it is, but if that's true, there's a substantial  
16                  likelihood that additional breaches will be discovered in the  
17                  future. And those breaches may give rise to liability on the  
18                  part of the debtors, liability that I believe the debtors have  
19                  admitted. The loan documents -- the transaction documents are  
20                  reasonably clear.

21                  It's reasonable, then, I believe, to assume that some  
22                  portion of the nineteen percent of the loans that aren't  
23                  performing, which is some 15,000 mortgage loans, may result in  
24                  losses for which the debtors might be liable. We don't know  
25                  that because when there's a default and a breach that's

1 discovered, there will need to be a complicated analysis of a  
2 multitude of documents that are involved, as counsel alluded  
3 to. Some of these transactions involved origination by  
4 correspondence and reps and warranties were passed along, and  
5 in certain instances, the debtors are insulated from liability  
6 if those transferors have liability. But there are a lot of  
7 documents that are going to have to be looked at and analyzed  
8 to decide whether there is liability by the debtors, and if so,  
9 the amount of that liability once breaches are discovered. But  
10 the --

11 THE COURT: Can I ask you a very --

12 MR. FAGONE: Yes, certainly.

13 THE COURT: -- basic question about this distinction  
14 between defaults and breaches? It's the same confusion that I  
15 exhibited during the debtors' presentation. Do you acknowledge  
16 that there is no equivalence between defaults and breaches of  
17 these warranties, and then I really have a question that goes  
18 to ordinary course practice? I assume that it is possible,  
19 although it might be very expensive, to identify whether or not  
20 there are any breaches in the entire portfolio that includes  
21 performing loans, and that based upon what you said, there's an  
22 ordinary course practice of not looking for breaches until  
23 there is a default. Is that correct?

24 MR. FAGONE: I believe so, Your Honor, yes. I believe  
25 it's possible for someone to take a mortgage loan file and

1 examine it and determine whether any of the representations or  
2 warranties made by the debtors or the transferors are  
3 materially incorrect. So the answer to that is yes. And I  
4 believe that the answer to Your Honor's question about the  
5 ordinary course is also correct. When these loans -- when the  
6 borrowers on these underlying mortgage loans are making their  
7 monthly mortgage payment and they're paying their taxes, and  
8 they're otherwise doing what they're supposed to be doing, I  
9 don't believe that there's any reason to or that the business  
10 practice involves taking the loan file out and auditing that  
11 file to see if there's a problem. So I think there is an  
12 equivalence, Your Honor, from a practical sense; maybe not from  
13 a legal sense in terms of what the documents require or  
14 describe, but I believe that there is an equivalence.

15 THE COURT: Okay.

16 MR. FAGONE: Have I answered Your Honor's question?

17 THE COURT: That answers it; thank you.

18 MR. FAGONE: Okay, thank you.

19 Just moving on, Your Honor, lastly -- I'm sorry, on  
20 this distinction between validity and amount, we don't believe  
21 that the inability today, at this particular stage of the  
22 contested matter, to know the precise amount of the claims  
23 means that the claims should be disallowed, which is what I  
24 understand the debtors to be seeking. Nothing in Section 502  
25 provides for that disallowance on that basis; in fact, Section

1 502(b) prohibits disallowance, simply because a claim is  
2 contingent or unmatured. There needs to be something else, I  
3 think, under 502(b)(1) before a claim can be disallowed, at  
4 least on that basis, and the debtors haven't suggested any  
5 other basis than 502(b).

6 Section 502(c) deals with estimation of contingent or  
7 unliquidated claims in certain circumstances that may not be  
8 present here, but the existence of that section, combined with  
9 Section 502(b), in our view, shows that an inability to know  
10 the amount doesn't translate to disallowance, as the debtors  
11 suggest.

12 Just moving on lastly, Your Honor, to the bar date  
13 issue briefly, we think that we met the bar date. We recognize  
14 that the bar date order was the product of protracted  
15 negotiation and that it has some custom-made features. We  
16 think, however, we complied with its terms by providing  
17 supporting documentation. We admit that we did not provide  
18 every single transaction document or all of the exception  
19 reports when we filed the proofs of claim. We think that would  
20 have been burdensome on the trustees, burdensome on the debtors  
21 at that stage, and burdensome on the claims agent. The bar  
22 date order required certain types of information with respect  
23 to derivatives claims and with respect to guarantee claims, as  
24 I'm sure Your Honor recalls. It didn't say anything about  
25 specific information on residential mortgage loans.

1 Notwithstanding that, we made a good faith effort to put the  
2 debtors and the estates on notice of the bases for our claims,  
3 and we think that was all that was required. The debtors, in  
4 fact, concede that in our proof of claim, we identified the  
5 contractual provisions that might give rise to liability. So  
6 we think that that was sufficient to meet the bar date order's  
7 requirements, Your Honor.

8                   And lastly, in conclusion, we agree with the debtors'  
9 suggestion that evaluating these claims would be difficult and  
10 expensive. We agree with that. We also believe, however, that  
11 unless the parties can come up with some sort of a resolution  
12 for these types of claims, the Bankruptcy Code requires a  
13 process to determine the amount of the claims. And I think the  
14 Court should be aware that there have been discussions between  
15 the debtors and between similarly-situated trustees about a  
16 process that could be used to resolve a significant universe of  
17 claims in these cases. Those discussions haven't materialized,  
18 but they are ongoing, and if they're not fruitful, we believe  
19 that the parties will be required to undertake significant  
20 effort at significant expense to determine the amount of the  
21 claims for purposes of allowance.

22                   And that's all I have, unless there are questions.

23                   THE COURT: I do have a question in reference to your  
24 last comment. Is it your view that these objections should not  
25 be allowed so that a process can go forward which would result

1 in potentially a consensual agreement as to some percentage of  
2 loans or some percentage of claim amount that might be deemed  
3 allowed, or alternatively, that there would be a need to go  
4 through these loan files, loan-by-loan, regardless of default  
5 in order to actually determine the breaches?

6 MR. FAGONE: The former, Your Honor. In other words,  
7 I want to be careful because I don't want to inform the Court  
8 of the precise discussions that have been taking place, but --

9 THE COURT: I don't want to know about that.

10 MR. FAGONE: Understood. But no, Your Honor, I think  
11 the expectation is that if these objections are overruled, one  
12 of two things would happen. First, the parties would continue  
13 working toward some sort of efficient resolution of the claims,  
14 whether it's via a protocol like the one that was used in New  
15 Century, or whether it's through some other mechanism, I don't  
16 know yet. That's one option. The other option, Your Honor, is  
17 that the debtors join the issue by raising objections on the  
18 merits and the parties are tasked with coming up with a  
19 scheduling order for hearing to determine the amount of the  
20 claims, which I think would involve expert testimony and  
21 analysis and analytics of the type that counsel referred to in  
22 his remarks to the Court. So those are the two options that I  
23 see that we think would be appropriate, under the  
24 circumstances.

25 THE COURT: All right, thank you.

1 MR. FAGONE: Thank you, Your Honor.

2 MR. ROLLIN: Your Honor, just speaking with counsel  
3 for U.S. Bank, it might be useful for the Court if I just have  
4 some brief reply remarks with respect to Citi, and then U.S.  
5 Bank proceed, and then reply with respect to them just to keep  
6 things a little bit more organized. Would that be all right?

7 THE COURT: Wasn't what I had in mind, but if it's --

8 MR. ROLLIN: We'll do whatever the Court has in mind.

9 THE COURT: What I have in mind is hearing all the  
10 objectors, and then you can respond in whatever order you  
11 prefer.

12 MR. ROLLIN: Yes, Your Honor.

13 MR. PRICE: Good morning, Your Honor. Craig Price on  
14 behalf of U.S. Bank which serves as trustee in these cases for  
15 more than 200 residential real estate trusts. As both the  
16 debtors and Citibank has made clear, the objections relate to,  
17 first, representation and warranty claims, as well as document  
18 deficiency claims. The various trust agreements contain about  
19 twenty -- generally twenty representations and warranties that  
20 needs typically relate to the quality of the mortgages that  
21 were placed into the trust. While many of these, as the  
22 debtors have made clear, specified that the originators, not  
23 necessarily the debtors, will be responsible for the breaches,  
24 the debtors did specifically retain a number of representation  
25 and warranties in the trust agreements.

1                   In addition, an affiliate of the debtors has also  
2 served as an originator. The trustee does not administer the  
3 individual loans. These various loans are administered by  
4 servicers who are overseen by master servicers. In order to  
5 make a claim for the breaches of representation and warranties,  
6 the trustee has requested from the master servicers a list of  
7 all the mortgages known with breaches of representation and  
8 warranties. The trustee has provided this information to the  
9 debtors, as the debtors made clear, and the debtors assert to  
10 date that there have been claims for approximately 800  
11 individual mortgage loans.

12                   As I said before, the mortgage loan deficiencies  
13 relate to the documents actually inside the mortgage files.  
14 These documents are retained by custodians who review each of  
15 them for a nonsubstantive basis to determine whether all the  
16 appropriate documents are there. They don't look at -- they  
17 don't make inquiries to whether if a document's executed that  
18 an actual individual executed that, that the proper person  
19 executed it. They just make sure these documents are signed.  
20 And we have transmitted reports from the custodians to the  
21 debtors that approximately twenty-six percent of the loan files  
22 contain possible deficiency claims, which, considering that  
23 U.S. Bank has over a million mortgages, that's 260,000 files  
24 that contain possible deficiencies.

25                   Contrary to the debtors' claims, U.S. Bank has

1 provided over a million pages of documents to the debtors.  
2 These include all of the transactional documents with respect  
3 to over 200 securitization transactions.

4 THE COURT: Let me just understand --

5 MR. PRICE: Sure.

6 THE COURT: -- what that process has been, though.

7 You didn't provide those documents at the time of filing the  
8 proof of claim. I assume those --

9 MR. PRICE: That -- that's right.

10 THE COURT: -- documents had been filed with the  
11 debtor as part of some ongoing process of --

12 MR. PRICE: That's right.

13 THE COURT: -- updating the claims.

14 MR. PRICE: We created an extranet site where we  
15 uploaded all of those documents because it's my understanding  
16 even the documents that the debtors themselves were involved  
17 with they didn't have those, so we created a -- essentially a  
18 web site for all of the transactional documents. And we've  
19 been -- that's been an ongoing process. I know as recently as  
20 two weeks ago they asked for certain certifications, and we've  
21 given them those. So it's been an ongoing process for quite  
22 some time that's involved an incredible amount of expense and  
23 time by numerous parties.

24 THE COURT: Okay. At this instance, did that  
25 process -- was that something that you wanted to do, or

1 something the debtor --

2 MR. PRICE: That was the debtors' request.

3 THE COURT: -- requested, or something that was agreed  
4 to by both parties?

5 MR. PRICE: It was agreed to by both parties that we  
6 would do it. And we generally have been responding to the  
7 debtors' requests for documents, but we've also contacted them,  
8 and you know asked, what do you need; what documents do you  
9 want? So I think we've been very cooperative and tried to do  
10 this as a process together in terms of getting them the  
11 documents that they need.

12 THE COURT: Okay. Well, beyond this factual predicate  
13 faired argument, what are your legal arguments?

14 MR. PRICE: Okay. Well, just let me finish by saying  
15 that the debtors have -- with respect to all the individual  
16 loan files that we have given them, they've withdrawn their  
17 claims.

18 So what we're talking about are those claims that have  
19 yet to be revealed to the debtors or given to them with regard  
20 to specific breaches of individual loan files. And what we  
21 would say is that, you know, most of these files, while we  
22 don't know if they have defects or not, they're essentially  
23 latent defects. They remain hidden in these files. We can't  
24 look in an individual loan file and know that a particular  
25 person is going to, you know -- if their mortgage -- if action

1 is taken with regard to mortgage, for instance, if the person  
2 goes into default, that they will then claim that they didn't  
3 actually sign this document, or that they were fraudulently  
4 induced into, you know, a mortgage that they couldn't afford,  
5 or that the appraisal was wrong. We can't -- just from an --  
6 on a loan-by-loan basis, even if we undertook this sort of  
7 investigation that the debtors are suggesting that we  
8 undertake, we couldn't possibly find that information because  
9 on a review of the file you wouldn't know if someone was  
10 fraudulently induced into a mortgage that they couldn't afford,  
11 or that they didn't actual -- even if there's a signature, that  
12 someone else signed this, or that there -- that they -- there  
13 was insufficient documentation about their income. I mean you  
14 just wouldn't be able to find that. And so a substantive  
15 review of every single mortgage file wouldn't be sufficient in  
16 this instance in order to recognize where claims for breaches  
17 of representation and warranties exist. It just -- it wouldn't  
18 happen, and that process in of itself would be incredibly  
19 expensive.

20 And if you looked at all of the files, you also  
21 wouldn't know which ones are going to go into default, for  
22 instance; they may be performing. There may be reps and  
23 warranty violations that exist, but the people are paying their  
24 mortgage on time. So the process of going -- of doing that,  
25 it's the reason why in the ordinary course they don't do that.

1 They look; they wait until some sort of action has been taken.

2 And those 800 mortgage files that we have given to the  
3 debtors, those are ones where we know that there are breaches.

4 But the remaining, you know, million mortgages minus these 800,  
5 we don't know if those people will go into default. We don't  
6 know if there are latent breaches with regard to any of those  
7 mortgages, and that's why we filed our proof of claim for the  
8 entire amount. But as Citibank made clear, we did it the same  
9 way.

10 We were clear that this was done as a prophylactic  
11 measure, as a protective measure for the bank, and that this is  
12 an unliquidated amount. We never tried to mislead them and say  
13 we're seeking the entire amount of all of the mortgages and  
14 their -- it's just that we can't possibly know. We're not  
15 going to re-underwrite every single mortgage because even if we  
16 did that we wouldn't possibly know what -- and you know, for  
17 instance, there's an example involving the GreenPoint  
18 transaction, which is one of the transactions that's at issue  
19 here. There's an insurer, actually, in this transaction, and  
20 that insurer has sued because -- claiming that these loans were  
21 not what they were made out to be. The originator has sued --  
22 has defended that by saying that these aren't mortgages that  
23 should have ever been securitized. In that instance, there --  
24 and we've told the debtors about this. They've been in receipt  
25 of all the litigation documents and various letters going back

1 and forth that, if the originator succeeds, all of these  
2 mortgages would need to be repurchased because that would be  
3 one of the reps and warranties that they were allowed to be  
4 transferred. So that litigation hasn't been finalized in any  
5 way, so there's no possible way of knowing whether these  
6 mortgages have breached their representation and warranties.  
7 And those mortgages may be performing mortgages, so an  
8 individual review of the files within that transaction, they  
9 may be -- that may be my mortgage, and I --

10 THE COURT: So recognizing that this is a problem that  
11 ranges between difficult to impossible, what are you proposing?

12 MR. PRICE: Well, I think that -- I think there's two  
13 things. One, we would propose there's a lot of different ways  
14 that this could be done. A reserve could be set up, and that's  
15 been done in several different cases: the Conseco Finance  
16 case, the DVI bankruptcy proceeding. I know in Conseco that  
17 involved something somewhat similar in that it was manufactured  
18 housing, these breaches in representation and warranties. They  
19 put a mechanism in place that actually, you know, provided  
20 money for when there was a loss that it would be paid out, and  
21 that's one way we could do that.

22 Another way is to develop some formula to liquidate  
23 the claim, and that's been done before in American Home  
24 Mortgage, New Century, and the Aegis Mortgage cases. In order  
25 to -- and that would have the effect of not, you know, forcing

1 the debtors and the trustees to expend vast amounts of money  
2 investigating files, which even after that investigation they  
3 wouldn't be able to determine whether there were actual  
4 breaches of representation and warranties in these files.

5 And the only other thing I would like to say in terms  
6 of a legal argument is the two cases that were -- have been  
7 cited by the debtors that require that the actual mortgage loan  
8 file by file be attached were both Chapter 13 cases where there  
9 was one individual. And in that case, they did require the  
10 mortgage to be attached, but we have a million mortgages: we  
11 couldn't possibly attach all of those to our proof of claim  
12 form. And even we did, it wouldn't be helpful to both to the  
13 debtors or to the trustee because we still wouldn't know which  
14 of those individual loans has a problem. If we located one  
15 that did have a problem, it may be performing.

16 THE COURT: So is it your position that the  
17 insufficient documentation objection is, in effect, one that  
18 should be overruled because there is simply a practical  
19 impossibility to comply with the documentation requirement?

20 MR. PRICE: That's right. I mean I think it's  
21 impossible --

22 THE COURT: I'm just trying to understand your  
23 position as a matter of law.

24 MR. PRICE: Right. I think that in terms of  
25 document -- insufficient documentation, we've given them

1 millions of pages of documents, but we --

2 THE COURT: But you didn't do that in connection with  
3 the proof of claim as much as you did it in connection with a  
4 process that the parties adopted subsequent thereto.

5 MR. PRICE: Well, that's correct, but we certainly, in  
6 our proof of claim addendum, said that we would provide any  
7 documents that the debtors requested. But we did it as part of  
8 a process with the debtors whereby we attempt -- we're  
9 attempting to cooperate in order to resolve these claims and in  
10 order to set up some sort of process by which --

11 THE COURT: And what you're saying is that while you  
12 provided information that demonstrates that there are certain  
13 residential mortgage loans that you believe may involve  
14 breaches, there's a whole class of residential mortgage loans  
15 where it's not possible to know now whether there are breaches  
16 or potential breaches?

17 MR. PRICE: That's right.

18 THE COURT: Is that right?

19 MR. PRICE: That's right.

20 THE COURT: Okay. Thank you.

21 MR. PRICE: Okay. One other thing that I'd just like  
22 to mention because it does involve a number of the objection --  
23 of the claims that are being objected to is a class of  
24 resecuritization claims. These were trusts where the actual  
25 certificates from these residential mortgage trusts were put

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1 into a different trust. They don't have actual mortgage loans  
2 as part of the assets of the trust; they have certificates from  
3 trusts which have mortgage loans in them. We have provided the  
4 debtors with all the transaction documents in those instances,  
5 and we've been working with the debtors.

6 There's a few instances where certain certificates --  
7 and those are from the SASCO Series 2003-37(a) and the SASCO  
8 Series 2003-31(a) -- these certificates were supposed to be put  
9 into these various trusts and they never were. I think we  
10 believe that they were taken as collateral right before the  
11 bankruptcy occurred. And we've been working with the debtor to  
12 try to find those an order to put those into these various  
13 trusts. On those, we don't know what other documents that the  
14 debtors are seeking to have. There are no individual mortgage  
15 loans. The only reason that they're included in this is not --  
16 is because in a roundabout way they have a tide of residential  
17 mortgages, but those -- and we don't know what else to do  
18 besides provide them with these transaction documents. They  
19 haven't requested any other documentation, and we think that  
20 the objections with respect to those should be adjourned until  
21 the debtors can point to specific documents that they're  
22 seeking.

23 THE COURT: Okay.

24 MR. PRICE: Is there any other questions?

25 Okay. Thank you.

1                   THE COURT: None at this time. Is there anyone else  
2 who is going to be speaking? Okay.

3                   MR. ROLLIN: Anybody else?

4                   THE COURT: Your turn.

5                   MR. ROLLIN: Thank you, Your Honor. I think I'll take  
6 U.S. Bank first, although some issues will cross. I think both  
7 of the creditors, both of the trustees have told us that they  
8 have provided all the information that they have where they  
9 believe there's a loan specific breach that they can allege,  
10 and that means that with respect to all the others they don't  
11 have any proof or even allegation of a breach of representation  
12 and warranty for which the debtors are liable.

13                  THE COURT: Well, here's a problem I'm having, and  
14 maybe you can use this opportunity to explain your position in  
15 a way that resolves my concern. As I understand it, in the  
16 universe of mortgages that we're talking about, there is a  
17 commercial problem in identifying the existence of the breaches  
18 that are at issue here, and that no rational trustee or loan  
19 servicer would perform an inventory of each and every loan to  
20 identify the existence of a possible breach in the absence of a  
21 loan default because to do so would be both incredibly time-  
22 consuming and expensive on the one hand, and probably of little  
23 utility on the other because for reasons that have been  
24 expressed it's very difficult to know whether or not there has  
25 been a potential breach of a rep and warranty until sometime

1 later in the process. And so in my mind, and I may be making a  
2 leap that is inappropriate, this is a little bit like an  
3 asbestos case where it's impossible to know fully every  
4 potential claimant by virtue of asbestos exposure, but  
5 nonetheless plans of reorganization are developed to deal with  
6 future claims, including those that haven't yet matured. Why  
7 is this not like that in the sense that we have a pool of  
8 loans, some percentage of which may, in fact, include these rep  
9 and warranty problems, but we don't know which ones yet, but  
10 it's probably possible to identify some computer program that  
11 can tell you with reasonable precision how many of these are  
12 likely to be bad? Those are my musings. What's your response?

13 MR. ROLLIN: There's a -- there are two questions  
14 there, I think, Your Honor, and one has to do with whether it's  
15 capable of being done, and that is identifying breaches before  
16 they go into default, which often, as I say, the trigger for a  
17 review. And then the second one is coming up with some sort  
18 of, what I think the Court is suggesting, an estimation based  
19 on a model. I'll address those in turn.

20 There's nothing about the event of a default that  
21 creates an effect that would bear on the existence of a breach  
22 of a representation and warranty. It is used as a shortcut as a  
23 trigger to search, and it is done so as a business decision of  
24 the trustee's. That's the way they choose to operate.  
25 Different trustees are more or less aggressive with respect to

1 the identification and prosecution of representation and  
2 warranty claims. There are other claimants who are not before  
3 the Court in these objections right now because they have  
4 provided a very significant amount of information. There are  
5 these claimants who are before the Court only to the extent  
6 they've provided no information but are not before the Court  
7 with respect to they've provided any scintilla of evidence of a  
8 loan level breach. And so it's their choice how they want to  
9 manage this operation on behalf of the certificate holders, and  
10 they've chosen whatever they've chosen, but they've been able  
11 to provide evidence as to some and no evidence, no scintilla,  
12 as to others.

13 Now, with respect to estimating, estimations have been  
14 used in other bankruptcies, and those are bankruptcies that are  
15 filed by -- where the debtor is an originator. We have a  
16 different situation here. We are in some case an originator,  
17 but primarily the debtors' role in these issues is as a seller  
18 into the securitization market and a depositor, and the debtors  
19 have very significant risk-shifting and indemnification rights  
20 as against third parties, the third party sellers. And in  
21 fact, one of things that I do is I prosecute those  
22 indemnification rights rather successfully against not --  
23 unaffiliated companies. And so to establish a protocol,  
24 estimation protocol, by which the debtors pay out sight unseen,  
25 they don't obtain any of the information that would entitle the

1 estate to its indemnification from others, or appropriately  
2 shift the risk to transferors. We've talked about a number of  
3 times that the -- many of these claims must be prosecuted  
4 against other parties, and the language in the -- I set it  
5 down, but the language in the trust agreement says the trustee  
6 acknowledges that there's no liability for certain  
7 representations and warranties, the type that are issue here,  
8 and that the liability is that of the transferor. Any sort of  
9 an estimation protocol would do away with those protections  
10 that would benefit the estate and that would benefit other  
11 claimants.

12 The issue that Mr. Fagone spoke about, about the  
13 negotiations that are ongoing -- I want to make sure we're  
14 clear --- there is no proposal that -- and the debtors have no  
15 interest in this for the reasons I just mentioned -- by which  
16 based on some certain percentage all of the claims would be  
17 paid out. That's not a feature of the existing negotiations.  
18 The negotiations would still require a loan-by-loan  
19 determination. And to Mr. Fagone's credit, he just wasn't part  
20 of some of the more recent discussions; I'm not holding it  
21 against him in any way. He's been a terrific colleague, but  
22 that's just not the case. There still would involve a loan-by-  
23 loan resolution if -- to the extent that they can't come  
24 forward with the loan level breach they don't get paid. Now --

25 THE COURT: Yeah, but isn't there a problem with the

1 various objections here because if I were to grant relief you  
2 seek, any of these claims that might exist on a loan-by-loan  
3 basis go away; they're disallowed on the basis of insufficient  
4 documentation? But based upon the colloquy today, there seems  
5 to be little dispute that the exercise of going through a loan-  
6 by-loan review is both burdensome and commercially  
7 impracticable. There are just too many of the loans, and those  
8 that are performing are more likely than not loans that will  
9 not include breaches; they might, but they probably don't. So  
10 isn't there some injustice here in using the blunt instrument  
11 of an omnibus objection to claims on the basis of documentation  
12 in a setting in which it is very difficult to come up with the  
13 documentation that you seek? And in fact, there has been an  
14 ongoing process to gain that documentation which while not an  
15 admission is at least demonstrative proof that this is a  
16 difficult process.

17 MR. ROLLIN: The process that we're suggesting should  
18 apply to the resolution of these claims is the process to which  
19 the parties agreed in their contracts: nothing more, nothing  
20 less. If they wanted -- if a trustee or any other purchaser of  
21 a mortgage loan from Lehman wanted to put that loan back or to  
22 seek indemnity, they had the right to do so, and they had to  
23 satisfy certain conditions precedent of notice, an opportunity  
24 to cure, and then establish all of the elements of liability.

25 What the claimants are asking for now is relief from

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1 their contractual agreement with the debtors with respect to  
2 the terms by which and the amount for which their claims would  
3 be resolved. Now, if the mechanism at this juncture of  
4 disallowance, the blunt instrument as Your Honor refers, is in  
5 the Court's opinion too blunt, then I think we should take into  
6 consideration what Mr. Fagone conceded both in his papers and  
7 here. And I, frankly, don't know exactly what U.S. Bank's  
8 position is on that, that there ought be no presumption of  
9 validity as to these claims. They've provided no information.  
10 And if there's no presumption of validity, then we can proceed  
11 on that basis.

12 THE COURT: I don't know what you just said --

13 MR. ROLLIN: Sure.

14 THE COURT: -- about --

15 MR. ROLLIN: If there's --

16 THE COURT: -- the presumption of validity.

17 MR. ROLLIN: If there is no presumption of validity  
18 with respect to the claims for the 800,000 loans, then, well,  
19 frankly, they've had an opportunity to adduce evidence and have  
20 not.

21 THE COURT: He said there is a presumption of  
22 validity.

23 MR. ROLLIN: No, I believe Mr. Fagone in his papers,  
24 in Citi's papers, states that they recognize that there may be  
25 no presumption of validity, but --

1 THE COURT: I -- did I misunderstand you?

2 MR. FAGONE: No, you did not, Your Honor. What I  
3 meant to say and I believe I said was we concede that in light  
4 of the objection there may not be a *prima facie* effect as to  
5 the amount of the claims. I was drawing the distinction  
6 between amount and validity, and I apologize.

7 MR. ROLLIN: No.

8 THE COURT: That's --

9 MR. ROLLIN: I --

10 THE COURT: -- what I thought you said.

11 MR. ROLLIN: I stand corrected. Well, then I won't  
12 attribute the concession to either of the claimants, but I  
13 think that's still an appropriate result that these don't rise  
14 to the level of a claim. I realize it's difficult, but they  
15 still don't rise to the level of a claim to which a *prima facie*  
16 validity should attach. And if the Court's disinclined to  
17 disallow it this time because the instrument is too blunt, then  
18 we can proceed on appropriate proceedings to resolve on a loan-  
19 by-loan basis if the parties can't reach an agreement. I think  
20 that's what the code and the procedures would call for in this  
21 instance.

22 THE COURT: Okay. Do you have more?

23 MR. ROLLIN: I'd only -- one last point, Your Honor,  
24 and that is -- well, I hope that this is one last point.  
25 Counsel for U.S. Bank raised some issues about GreenPoint. To

1 the extent that there's any issue with respect to GreenPoint, I  
2 got a flurry of e-mails in the middle of the night last night  
3 about GreenPoint. I'm certainly willing to --

4 THE COURT: Were you awake to read them?

5 MR. ROLLIN: No, I found them this morning, Your  
6 Honor. But this is a very recent, within the last twenty-four  
7 hours development. I don't know if they've made a claim about  
8 this, or whether they're making a claim now. It's completely  
9 unclear to us. And honestly, in preparation for the hearing, I  
10 haven't had an opportunity to review the ten or so e-mails with  
11 attached documents from U.S. Bank.

12 THE COURT: Okay.

13 MR. ROLLIN: That's all I have, Your Honor. Thank  
14 you.

15 THE COURT: Does the committee have anything to say  
16 about any of this?

17 MR. O'DONNELL: Your Honor, if I may, just briefly,  
18 Your Honor, Dennis O'Donnell, Milbank, Tweed, Hadley & McCloy,  
19 on behalf of the committee. And just an observation having sat  
20 through this argument, I think the thing that concerns us the  
21 most is the burden and the financial burden and where it lays  
22 in the resolution of these claims. I heard a lot of things  
23 about what can and cannot get done here. I don't think I heard  
24 it was utterly impossible to do a loan-by-loan review to  
25 establish whether there are, in fact, breaches that could be

1 evidenced now. What I heard was that it could be expensive.

2 But I think ultimately it should be the claimants'  
3 burden with respect to expense to do a cost benefit analysis of  
4 their own to determine which claims they could ultimately  
5 prove, and not put that burden on the estate and the Court to  
6 establish some kind of process where they would essentially get  
7 a free pass to prove that over a period of time. I think they  
8 need to make a determination, and the Court can let them do so,  
9 whether, in fact, they could ultimately prove and what quantity  
10 of claims they could prove and go with those and not try to  
11 prove the rest. Otherwise, you are imposing on the estate the  
12 burden of either litigation or a process that would not  
13 otherwise be required with respect to other types of claims. I  
14 mean there are claimants who elect not to prosecute claims  
15 because the cost of doing so would be -- would outweigh the  
16 potential benefit. And from our perspective, I think that is  
17 one measure that should guide the Court here in determining who  
18 should bear the burden.

19 THE COURT: Okay. I'm going to reserve judgment on  
20 this and not decide this from the bench today. And I think  
21 that the presentations by all parties highlight the complexity  
22 of the process of proving the existence and the amount of any  
23 claim for these representation and warranty breaches in  
24 residential loans. I don't rely on this, but I take judicial  
25 notice of the fact that problems in the residential loan

1 origination market and the securitization of such loans are a  
2 routine matter of concern in the business press, and as  
3 recently as yesterday the settlement proposed in the matter of  
4 Bank of America made headlines. There may be no comparability  
5 to that problem and the problem which is before the Court, but  
6 I am not inclined to simply broadly disallow all of these  
7 claims on the basis of an insufficient documentation objection.

8 I do think that the parties, while I am reserving  
9 judgment, should be engaged in ongoing efforts to try to come  
10 up with some reasonable, commercially practical approach to  
11 dealing with the problem. In theory, there may be no claims  
12 here. And at some point if there are claims, the trustees  
13 would be put to their proof, and whether they can actually  
14 succeed in carrying a burden of proof establishing residential  
15 and mortgage loan breaches is a matter as to which I am unable  
16 to express any view at the moment. It seems to me it would be  
17 extraordinarily difficult. So while these claims may reside in  
18 some nether world of theory, it seems to me that in practice it  
19 will be very difficult to establish these claims.

20 That having been said, I don't think that I am in a  
21 position to simply automatically disallow them based upon the  
22 statements that have been made today. I will also note that  
23 what we have had today is an argument and does not constitute  
24 an evidentiary hearing to the extent that any party believes  
25 that it would be useful to the process of reaching final

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1 resolution of the claims to present actual evidence as to how  
2 one would go about identifying the existence of breaches and  
3 the burden of doing so. I am open to a request for the  
4 scheduling of such a hearing, but I will do so only at the  
5 request of a party. Let's take on the next one.

6 MR. DOZORSKY: Good morning, Your Honor. This is  
7 Attorney Dozorsky from California making a telephonic court  
8 appearance. Just to let the Court know this is regarding claim  
9 number 67087; it's an individual creditor claimant, Rosalinda  
10 Barrios. Opposition to the objection to this claim was filed.  
11 I'm not sure where we're at regarding these claim numbers, but  
12 I just wish the Court to know that I am making a telephonic  
13 appearance for this creditor.

14 THE COURT: I understand you're on the line, but I  
15 don't have that on my agenda.

16 MR. DOZORSKY: Oh, really? Because I received a  
17 notice from the Court stating that this hearing was to cover an  
18 objection to this particular claim. This was really about a  
19 time bar situation; however, in my opposition, I point out that  
20 this creditor had no knowledge of the bankruptcy until she  
21 filed her civil action against BNC Mortgage LLC, which is one  
22 of the consolidated entities, and then she found out about this  
23 bankruptcy.

24 THE COURT: Well, I can tell you that I'm not -- I'm  
25 happy to hear what you have to say, but this is not on the

1 agenda for today.

2 MR. DOZORSKY: Okay. Well, all right, because that's  
3 not what the notice that I got says. It may have mentioned  
4 this hearing today.

5 THE COURT: What do the debtors say about this?

6 MS. DECKER: Your Honor, all contested late-filed  
7 claims objections -- I'll repeat that: all contested late-  
8 filed objections were adjourned and will not be heard today.  
9 And the debtors sent notices of adjournment approximately a  
10 week and a half a go by overnight mail, so.

11 MR. DOZORSKY: By, "adjournment," what does that mean  
12 practically? That the objection to the claim is dropped or  
13 what, or is going to be continued, the hearing will be  
14 continued to another date? What does that really mean?

15 MS. DECKER: The hearing will be continued at least  
16 until the July 21st hearing which will occur at 10 a.m. It may  
17 be further adjourned by the debtors, in which case another  
18 notice would be sent out.

19 MR. DOZORSKY: Okay. So I should be expecting a  
20 notice that this -- as of now, the hearing on those types of  
21 claims then is, in fact, continued to July 21st at 10 a.m., is  
22 that correct?

23 MS. DECKER: That is correct.

24 MR. DOZORSKY: Okay. Okay. Very good. Thank --

25 MS. DECKER: Thank --

1 MR. DOZORSKY: -- you very much.

2 MS. DECKER: Thank you.

3 MR. BERNSTEIN: Your Honor, Mark Bernstein from Weil  
4 on behalf of the Lehman debtors again. We have one more  
5 matter: two separate motions on the agenda relating to a late-  
6 filed claim motion filed more than a year ago by Mark Glasser.

7 THE COURT: Right.

8 MR. BERNSTEIN: The first motion, I guess, to be heard  
9 today is motion of his counsel to withdraw as counsel to Mr.  
10 Glasser. And then I'm not sure if Mr. Glasser is here or not,  
11 but originally scheduled today was also the evidentiary hearing  
12 that he's been -- that has been adjourned several times. So I  
13 think counsel to Mr. Glasser is here to speak.

14 THE COURT: Okay. Let's -- let me find out if Mr.  
15 Glasser is here. Is Mr. Glasser here?

16 MR. GRAIFMAN: I -- Your Honor, Brian Graifman,  
17 Gusrae, Kaplan, Bruno & Nusbaum PLLC, counsel for Mr. Glasser.  
18 I don't see him here, but I did speak with him on the phone  
19 weeks ago about this. He received notice. He actually got  
20 notice late because he had moved once again, although he had  
21 not informed me, but he did receive notice by June 14th. I did  
22 speak with him, e-mailed -- extensive e-mail with him. I gave  
23 him a copy of the notice of motion, the operative second  
24 amended order, a case management order, and essentially the  
25 motion speaks for itself. We're really, you know, not being

1 paid for our work at this point in time and ask to withdraw as  
2 counsel.

3 THE COURT: I take it based upon your communications  
4 with Mr. Glasser you can confirm that he does not oppose the  
5 motion?

6 MR. GRAIFMAN: He did not oppose -- he did not express  
7 that he opposed the motion. I offered him the -- I explained  
8 in the notice of motion that he could file an opposition. The  
9 notice was actually a more fulsome notice than I would normally  
10 give because of the pro se -- of the nature of him not being an  
11 attorney. He's a professional, however, and he has used other  
12 attorneys, so he kind of knows the score in some respect.

13 THE COURT: Okay. I'm going to grant your motion to  
14 withdraw as counsel. I read the papers indicating both  
15 nonpayment and an unspecified ethical concern, and on the basis  
16 of that and the fact that Mr. Glasser has not appeared to  
17 oppose your motion and has filed no papers in opposition to the  
18 motion, the motion is granted as unopposed.

19 MR. GRAIFMAN: Thank you, Your Honor.

20 THE COURT: But you'll need to submit an order.

21 MR. GRAIFMAN: Okay.

22 THE COURT: And if you have one, you can just give it  
23 to debtors' counsel who can collect orders for today's hearing.

24 MR. GRAIFMAN: Right. I don't have one with me, but  
25 should I file it online, or give --

1 THE COURT: No, you should --

2 MR. GRAIFMAN: -- give to debtors' counsel?

3 THE COURT: You should either deliver an order to  
4 chambers on a disk, or if you want coordinate with debtors'  
5 counsel, they've generally been fairly good at managing the  
6 flow of paper.

7 MR. GRAIFMAN: Thank you, Your Honor.

8 THE COURT: Okay. Since Mr. Glasser is not present in  
9 Court to prosecute on his own, his personal motion to extend  
10 time for filing his claim I'm not hearing that today. I think  
11 in fairness to Mr. Glasser it would be useful to give him  
12 direct notice that unless he takes steps on -- in his  
13 individual capacity or through replacement counsel to prosecute  
14 this matter which has been pending for well over a year, that  
15 it would be reasonable for him to either voluntarily withdraw  
16 the motion, or absent such withdrawal for it to be listed at  
17 another omnibus hearing on claims objections. At which point,  
18 if he fails to show to prosecute the matter, I will deny his  
19 motion with prejudice.

20 MR. GRAIFMAN: Your Honor, I will provide Mr.  
21 Bernstein with Mr. Glasser's current contact information:  
22 address, phone, and e-mail.

23 THE COURT: Okay. Thank you. Is there any more for  
24 today? Then we are adjourned.

25 (Whereupon these proceedings were concluded at 11:43 AM)

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RULINGS

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10	Amendment to 103rd omnibus objection granted	13	23
11	137th omnibus objection relief granted	14	18
12	Fortieth omnibus objection granted with respect to the five PIMCO claims listed on Exhibit 2	15	16
15	Seventy-fourth omnibus objection granted with respect to the Federated Funds claims numbers 15065 and 15066	16	7
18	127th omnibus objection to claims granted as to claims number 40611 and 36803	17	3
20	139th omnibus objection to claims granted	18	1
21	140th omnibus objection to claims granted	18	14
22	141st omnibus objection to claims granted	18	25
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1	145th omnibus objection to claims granted	21 4
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7	claims are granted	
8	136th omnibus objection granted	25 4
9	138th omnibus objection to claims is granted	25 18
10	109th Omnibus objection granted as to claims	26 21
11	on Exhibit 18	
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13	on Exhibit 16	
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15	granted	
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2 C E R T I F I C A T I O N

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4 I, Dena Page, certify that the foregoing transcript is a true  
5 and accurate record of the proceedings.

6

7 **Dena Page**

Digitally signed by Dena Page  
DN: cn=Dena Page, o, ou,  
email=digital1@veritext.com, c=US  
Date: 2011.07.01 14:36:48 -04'00'

8

9 DENA PAGE

10

11 Also transcribed by: Shelia Watkins

12

13 Veritext

14 200 Old Country Road

15 Suite 580

16 Mineola, NY 11501

17

18 Date: July 1, 2011

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